

MOTION BY SUPERVISORS HILDA L. SOLIS AND
MARK RIDLEY-THOMAS

May 12, 2015

RE-EVALUATE COOPERATION WITH FEDERAL IMMIGRATION AGENCIES

Two federal immigration enforcement programs currently operate in the Los Angeles County (County) jail system. Both require the cooperation of the County's Sheriff's Department, but only one requires the formal agreement of the Board of Supervisors (Board), initially signed in 2005 and most recently renewed in October 2014, before the election of two members of the Board. The two programs are duplicative and redundant, and the time has come to reevaluate the nature and scope of Los Angeles County's cooperation with the federal civil immigration agencies.

The 287(g) program, named after the section of the federal statute under which it is authorized (the Immigration and Nationality Act), authorizes the Immigration and Customs Enforcement agency (ICE), a component of the United States Department of Homeland Security (DHS), to enter into a written agreement with a state or county that allows local government employees to perform the functions of federal immigration agents. Such an agreement is currently in place with the County. Under the program authorized by this agreement, ICE agents (including County employees who have been deputized as ICE agents), all of whom are permanently housed in the release area of the Inmate Reception Center, review the release documentation of each inmate prior to release to determine whether that inmate is a potential candidate for deportation. If so, following an interview at which

MOTION

SOLIS	_____
RIDLEY-THOMAS	_____
KUEHL	_____
KNABE	_____
ANTONOVICH	_____

no attorney is present, the inmate is transferred to ICE custody.

The other program, the Priority Enforcement Program (PEP), is the evolving replacement for the widely-criticized Secure Communities Program. PEP, which begins upon an inmate's booking into the justice system, is distinct from the 287(g) program, which occurs during the inmate's release process. PEP, like the Secure Communities Program, relies on fingerprint-based biometric data submitted during bookings which is then analyzed off-site by DHS analysts. For inmates that satisfy certain criteria (discussed further below), DHS sends a request to the local law enforcement agency asking for notification of the inmate's imminent release. If the local law enforcement complies with this request, custody of the inmate is transferred, again after an interview conducted by ICE agents, to ICE prior to the inmate's scheduled release.

That these programs are duplicative should be obvious. The 287(g) program subjects the County to needless liability and unnecessarily occupies County resources—including space and personnel—that the County needs to conduct its business. More importantly, it erodes the community's trust in local law enforcement by muddying the distinction between the functions appropriate to local law enforcement agencies and those appropriate to federal immigration enforcement agencies. A 2013 study (University of Illinois) of Latinos living in the counties of Los Angeles, Cook (Chicago), Harris (Houston), and Maricopa (Phoenix) found that 70 percent of undocumented Latino immigrants and 28 percent of Latino U.S. citizens were less likely to contact law enforcement if they were victims of a crime for fear that police would inquire about their immigration status or the status of people they knew. The same dynamic holds true for other undocumented populations. Under the 287(g) program, not only are ICE agents permanently housed in County facilities, but ICE functions are performed by County employees. Discontinuing the 287(g) program will protect the County from future liability, will free up much needed County resources, and will improve the trust between local law enforcement and the community. It is the intent and understanding of the Board of the Supervisors in terminating the 287(g) program that the ICE office in the Inmate Reception Center (IRC) be closed and that the ICE agents permanently housed in the IRC be removed.

PEP is a more complicated issue. PEP's prior incarnation, the Secure

Communities Program, received widespread criticism for encouraging unconstitutional detention, for applying draconian consequences to minor crimes, and for lacking mechanisms to ensure accountability and transparency. As a consequence of such criticisms, Secure Communities was discontinued by Secretary of Homeland Security Jeh Johnson on November 20, 2014. In its place, Secretary Johnson established PEP, which purported to address criticisms of the Secure Communities Program by, among other things, restricting ICE's interest to those convicted of specifically enumerated "high-priority" crimes (like rape or murder) or those who pose a demonstrable risk to national security. DHS has also pledged to request custody transfers only *after* the inmate has been convicted of the crime for which he/she is currently detained and to work with the County to limit the set of triggering crimes to those that are consistent with the California TRUST Act.

As a consequence of the harsh and unproductive trauma inflicted on many of our constituents by Secure Communities, our posture towards the PEP must be: "trust, but verify." The County should continue to cooperate with PEP only if the Sheriff ensures that ICE is at all times in compliance not only with their own policies, but with the unique policies that Los Angeles must institute to further the unique public safety and community trust requirements of the County. Such policies should be developed in close collaboration with all stakeholders and be fully transparent to all.

WE, THEREFORE MOVE that the Board of Supervisors:

1. Direct the County Counsel to notify the U.S. Department of Homeland Security Immigration and Custom Enforcement (ICE) that the Memorandum of Agreement (MOA) entered into pursuant to § 287(g) of the Immigration and Naturalization Act and the program authorized thereby is hereby terminated pursuant to section XXI of the MOA.
2. Request the Sheriff to continue cooperating with the U.S. Department of Homeland Security in implementing the President's Priority Enforcement Program and to report back to the Board in 90 days, after consultation with community groups, the Board of Supervisors, justice system partners, and the Department of Homeland Security, with clearly defined policies, practices, and

procedures relating to such cooperation, including but not limited to access to the jails by ICE agents, the list of triggering California penal codes (or other California criminal codes) consistent with the California TRUST ACT; the maximum length of time for each crime that can have passed since release before transfer of custody becomes inappropriate; and the process by which the Sheriff intends to ensure the Sheriff's Department's compliance with all policies.

#

HLS: bp
MRT: vh